

Northwoods Manor, Inc. and Michigan Health Care Associates, District 1199M, District of the National Union Hospital and Health Care Employees Division of the Retail, Wholesale, Department Store Union, AFL-CIO, Petitioner.
Cases 30-RC-3958 and 30-RC-3959

March 11, 1982

DECISION ON REVIEW AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND ZIMMERMAN

On April 29, 1981, the Regional Director for Region 30 issued a Decision and Direction of Elections in the above-entitled proceeding in which he found appropriate the two units sought by Petitioner, one of all full-time and part-time licensed practical nurses (LPNs), and the other of all full-time and part-time registered nurses (RNs), at the Employer's Escanaba, Michigan, hospital facilities. The Regional Director rejected the Employer's contention that the LPNs and RNs should be excluded as supervisors within the meaning of Section 2(11) of the Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review and motion to stay the elections, on the grounds that the Regional Director made erroneous findings of fact and departed from officially reported precedent.

By telegraphic order dated May 29, 1981, the request for review was granted, and the motion to stay the elections was denied.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issue under review and makes the following findings:

The Employer is engaged in providing health care services at its two Escanaba, Michigan, facilities, Northwoods Manor and Northwoods Annex. The Manor consists of four wings, housing approximately 100 patients. The Annex consists of two halls, housing approximately 50 patients. The facilities operate on a 24-hour, 7-day-per-week basis, with staffing broken into three shifts per day. A single administrator and in-service coordinator serve both facilities. In addition, each facility has a director of nursing. A total of 24 LPNs, 3 RNs,

and approximately 75 aides and orderlies work in the Manor and Annex.

Petitioner already represents a unit of the Employer's aides and orderlies. As indicated above, Petitioner seeks to represent separate units of LPNs and RNs. The parties have agreed that separate units are appropriate and that the administrator, in-service coordinator, and two directors of nursing should be excluded from any unit as supervisory and/or managerial employees. The Employer, however, contends that all of the LPNs and RNs are supervisors who must be excluded from bargaining unit representation under the Act. We agree with the Employer.

LPNs and RNs have the same duties and responsibilities, insofar as their supervisory status is concerned, and all are designated as "charge nurses." At the Manor, 7 charge nurses and 23 aides staff the 7 a.m. to 3 p.m. shift, 5 charge nurses and 16 aides staff the 3 p.m. to 11 p.m. shift, and 2 charge nurses and 11 aides staff the 11 p.m. to 7 a.m. shift. At the Annex, the 3 shifts are staffed, respectively, by 4 charge nurses and 12 aides, 3 charge nurses and 8 aides, and 1 charge nurse and 6 aides. Each charge nurse is assigned to oversee a particular wing or hall, and is responsible for seeing that approximately three or four aides and orderlies perform their duties. This responsibility consumes approximately 20 percent of the charge nurses' working time. During the remainder of their time, they provide direct patient care, receive reports on conditions of patients, set up medication, call doctors when necessary, and admit patients.

When on duty, the administrator, in-service coordinator, or director of nursing assumes overall supervisory responsibility. During shifts when none of these officials are present, the charge nurses represent the highest ranking authority on the premises. Although the testimony is ambiguous about when these absences occur, it appears there are at least one shift per day during the week and two shifts per day each weekend when charge nurses are the highest ranking employees on duty. Although charge nurses have the option to consult with the director of nursing by telephone during these shifts, a director testified that they have never called her.

Charge nurses do not hire, fire, or interview applicants. They do, on the other hand, have the authority to issue oral and written reprimands, and can compel an aide to leave work early, punching out that employee's timecard for such transgressions as improper attire, disorderly behavior, drunkenness, or unsatisfactory performance of duties. The Employer's exhibits contain an example of an employee's discharge based on an LPN rec-

¹ The election was conducted on May 28, 1981, and all the ballots cast in each unit were impounded, pending disposition of the request for review.

ommendation and another example of a written warning issued by an LPN which informed the employee that one more offense would precipitate a suspension followed ultimately by discharge.

A biweekly work schedule is made up by the director of nursing, but charge nurses may independently reassign employees based on staffing needs, employee requests, or personality conflicts. In addition, the charge nurses may independently grant overtime, if necessary, and allow employees to leave work early. The charge nurses call in off-duty employees to fill staff shortages, but they do so according to an established priority schedule and on a noncompulsory basis.

The job descriptions for both RNs and LPNs require qualifications in leadership and supervisory ability. Complementary job descriptions for aides and orderlies state they are to be supervised by the director of nursing and by charge nurses. Aides and orderlies are also informed when hired that they are to be supervised by charge nurses, and these employees bring requests for reassignment, coffeekicks, and short-term time off to their charge nurses.

Based on the foregoing, we find that the Employer's charge nurses possess and actually exercise supervisory authority which requires the use of independent judgment and goes beyond the mere exercising of patient care responsibilities.² In particular, we find that the charge nurses have the independent authority to discipline employees and effectively to recommend discharge.³ We also find it significant that if charge nurses are not supervisors an unrealistic supervisor-to-employee ratio would exist at the Employer's facilities and no statutory

supervisor at all would be present during at least one hospital work shift daily.⁴

In finding that charge nurses are supervisors, we reject the Regional Director's evaluation of evidence that these individuals split their time between supervisory and patient care duties on a 20/80-percent basis. Relying on the Board's statements in *A. Barton Hepburn Hospital*, 238 NLRB 95 (1978), and *New York University*, 205 NLRB 4 (1973), the Regional Director concluded that charge nurses should not be excluded from unit representation because they spent less than 50 percent of their time supervising nonunit employees. In the decisions cited, however, the Board held that incidental nonunit supervisory duties of an employee whose principal duties were the same as those of other unit employees did not create a conflict of interest warranting exclusion of the disputed employee.⁵ A different situation exists when, as here, a substantial supervisory function is a principal duty common to the entire group of employees sought to be represented. Ordinarily, such a function would necessarily be exercised with respect to employees outside the "unit." The absence of intraunit supervision or conflict of interest is therefore irrelevant, and the Board must ascertain whether the supervisory duties evidenced, even if they consume less than 50 percent of an individual's worktime, are more than merely sporadic or irregular. We find that the supervisory duties of the Employer's charge nurses are substantial and regular.

Because we have found that all of the Employer's LPNs and RNs are supervisors who must be excluded from bargaining unit representation under the Act, the LPN and RN units sought by Petitioner are inappropriate. Accordingly, we shall dismiss the petitions.

ORDER

It is hereby ordered that the petitions filed herein be, and they hereby are, dismissed.

² Compare *Wright Memorial Hospital*, 255 NLRB 1319 (1981), where on an extremely similar set of facts the Board found charge nurses to be supervisors under Sec. 2(11) of the Act.

³ The examples cited of actual disciplinary action by charge nurses contradict the Regional Director's finding that the disciplinary role here is analogous to the trivial or reportorial role of LPNs who the Board found were not supervisors in *Pine Manor, Inc. d/b/a Pine Manor Nursing Home*, 238 NLRB 1654 (1978).

⁴ See *Wright Memorial*, *supra*.

⁵ Also see *Adelphi University*, 195 NLRB 639, 643-644 (1972).